In the High Court of Judicature at Madras

Dated: 15.09.2006

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The Honourable Mr.JUSTICE R.BALASUBRAMANIAN
and
The Honourable Mr.JUSTICE V.DHANAPALAN

Criminal Appeal Nos.1369, 1409, 1425 of 2004 & 544 of 2005

1. Prakash @ Bonda Prakash
2. Suresh
3. Ravi @ Vellai Ravi

.... Appellants in C.A.No.1369/04

Thirunavukkarasu

.... Appellant in C.A.No.1409/04

Viji alias Vijayakumar

.... Appellant in C.A.No.1425/04

Mani @ Manikandan

.... Appellant in C.A.No.544/05

Vs.

State by the Inspector of Police,
H.1, Washermanpet Police Station,
Chennai.
(Crime No. 1893 of 2001)

.... Respondent in all the appeals

APPEALs under Section 374(2) of the Code of Criminal Procedure against the judgment dated 09.11.2004 made in S.C.No.109 of 2002 on the file of the learned III Additional Sessions Judge, Chennai.

For Appellants : Mr. V.Parthiban - C.A.1369/04 (A3,A4 & A8)
Mr.K.Asokan, S.C. - C.A.1409/04 (A2)
Mr.S.Swamidoss Manokaran - C.A.1425 of 2004 (A1)
Mr.C.K.R.Lenin Sekar - C.A.544/05 - A9

For Respondent: Mr.N.R.Elango, Addl. Public Prosecutor (all appeals)

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J U D G M E N T

(Judgment of the Court was delivered by R.BALASUBRAMANIAN,J)

The appellants in these multiple appeals stand arrayed are A3, A4 A8; A2; A1 and A9 in S.C.No.109 of 2002 on the file of the third Additional Court of Sessions, Chennai. Totally eleven persons were tried in that sessions case for offences under Sections 147, 148, 341 and 302 I.P.C. Except the above appellants, rest were acquitted of all the offences. The appellants stand convicted - as we could see from paragraph 21 of the judgment in challenge - under Sections 147, 148, 341 and 302 I.P.C. In other words, the learned trial Judge did not acquit the appellants of the offences under Sections 147, 148, 341 I.P.C, as he had specifically acquitted rest of the accused of all the offences. But however under the judgment in challenge, he had sentenced each one of the convicted accused only for the offence under Section 302 I.P.C. and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/-, carrying a default sentence. The State had not challenged the acquittal of the acquitted accused. Hence, as already stated, all these appeals are before us. Heard Mr.K.Asokan, learned senior counsel appearing for A2, Mr.V.Parthiban, learned counsel appearing for A3, A4 and A8, Mr.Swamidoss Manokaran, learned counsel appearing for A1, Mr.C.K.R.Lenin Sekar, learned counsel appearing for A9 and Mr.N.R.Elango, learned Additional Public Prosecutor appearing for the State.

2. In this judgment, we will refer the appellants in these appeals in the same rank in which they were arrayed before the trial Court. The prosecution case is that all the accused forming themselves into members of an unlawful assembly committed the murder of Kandan and therefore punishable as referred to above. In support of their case, the prosecution examined P.Ws.1 to 13, besides marking Exs. P.1 to P.31 and M.Os 1 to 14. Neither oral nor documentary evidence was brought before Court at the instance of the accused.

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3. This is yet another case, where eye witnesses turned hostile. P.W.1 is examined as an eye witness to the occurrence. The deceased is known to P.W.1's son-in-law. P.W.1 was in her house near the crime scene at about 7.30 or 7.45 p.m. on 14.10.2001. At that time, she heard a commotion outside her house, which made her to come out. An autorickshaw was found parked in the corner of Thulukanam Lane - Cemetry Road. Kandan was inside the

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auto. She found all the accused indiscriminately cutting him. Out of fear, she went to the side and stood. Then all the accused left. Then she neared the scene where she found Kandan lying upside down with profusely bleeding injuries. With the help of Martin and others, P.W.1 transported injured Kandan to the Stanley Hospital, where he gave the details to the doctor. From the Stanley hospital, the injured was transferred to the Government General Hospital. However, P.W.1 did not accompany the injured to the Government General Hospital, but returned home. Two days later, she came to know that Kandan had died. P.W.2 examined as an eye witness to the occurrence turned hostile. P.W.3 is the mother of the deceased. She was informed by P.W.12's wife about the incident. She proceeded to the hospital where she enquired her son Kandan. At that time Kandan disclosed that Vellai Ravi (A8) Thirunavukkarasu (A2) Bonda (A3) and eleven others have cut him. However, she would admit that she did not know the cause for such attack. From the Stanley Hospital, her son was transferred to the Government General Hospital, Chennai, but despite treatment, he died two days later. P.W.4, examined as an eye witness to the occurrence, turned hostile. P.W.5, examined to prove that he witnessed the recovery of the incriminating objects, turned hostile. However, he would admit his signature in the recovery mahazar and the said signature had come to be marked as Ex.P.1. He also admitted his signature in another mahazar and that signature stands marked as Ex.P.2. P.W.6, examined to prove the examination of A1, A3, A4, A2, A6, A7, A5 in the police station and recording their confession statements leading to the recovery, turned hostile.

4. P.W.9 is the Sub-Inspector of Police in the investigating police station. At about 8.30 p.m. on 14.10.2001, when he was on duty, he received information over telephone from the Government Stanley Hospital about the crime and he accordingly reached the Stanley Hospital, where in Ward No.9, he found Kandan as an in patient. He examined him and reduced into writing the narration of Kandan. In that complaint, he had taken the right thumb impression of Kandan. During such examination, the duty doctor was present. Ex.P.8 is the said complaint. Kandan disclosed in the complaint that at about 7.45 p.m. on that night when he was talking with P.W.12 sitting in an autorickshaw in the junction of Thulukanam Lane and Cemetry Road, A1, A2, A8, A3, A4, A9 and others suddenly emerged; surrounded him and on seeing that P.W.12 ran away. He then disclosed as to how the crime took place. P.W.9 came back to the police station and registered the complaint in his police station Crime No.1893 of 2001 for offences under Sections 147, 148, 341 and 307 I.P.C. Ex.P.9 is the printed first information report. He sent the express records to the Court as well as to the higher officials. P.W.13 is the investigating officer. On receipt of the express records registered by P.W.9, he

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commenced investigation. He reached the Stanley Hospital and by examining Kandan, he recorded his statement. He examined the doctors also and recorded their statements. M.Os.1 to 3 were already recovered at the hospital by P.W.9 under Ex.P.12. P.W.13 in the presence of witnesses prepared Ex.P.13, the observation mahazar and Ex.P.14, the rough sketch. He examined other witnesses by recording their statements. Then he gave a requisition to the Metropolitan Magistrate to record the dying declaration of Kandan. P.W.10 is the 15th Metropolitan Magistrate, who on receipt of the requisition Ex.P.11 from the investigating officer, proceeded to the Government General Hospital, where by examining Kandan, he recorded his dying declaration. P.W.10 had the assistance of the duty doctor. P.W.10 examined injured Kandan personally by putting questions to him and as Kandan was answering in a proper manner, P.W.10 got satisfied that Kandan was in a position to give a statement. Duty Doctor by name, Dr.Thirukumaran has certified at the foot of the dying declaration recorded by him. Ex.P.10 is the dying declaration.

5. P.W.13 was continuing his investigation further by examining further witnesses and recorded their statements. He received Ex.P.15 the accident register from the General Hospital, Chennai. Coming to know that Kandan died at 00.25 a.m. on 17.10.2001, namely, on the intervening night of 16.10.2001 and 17.10.2001 in the General Hospital, Chennai, he altered the Section of offence into one under Section 302 I.P.C. and prepared Ex.P.16, the altered express first information report. He sent the altered express first information report to the Court as well as to the higher officials. He conducted inquest over the dead body in the Government General Hospital in the presence of witnesses and panchayatdhars. Ex.P.17 is the inquest report. During inquest, he examined P.W.1, P.W.4, P.W.12 and others by recording their statements. Then he sent a requisition to the hospital for post-mortem.

6. P.W.7 was the duty doctor in the Stanley Hospital at Chennai on 14.10.2001. At 8.15 p.m. on 14.10.2001, injured Kandan was brought by his neighbour for treatment. On examination, P.W.7 found Kandan conscious and Kandan told him that he came to receive the injuries at about 7.30 p.m. on 14.10.2001 in Thulukanam Lane – Cemetry Road Junction at Old Washermenpet at the hands of 15 unknown persons by the use of sharp weapons. On him, he found various symptoms, as noted in Ex.P.4, the accident register. The symptoms noted by him are as here under:

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"Injuries:

1. Laceration left wrist dorsum 7x4x2 cm.
2. Laceration left hand dorsum 10x4x2 cm.
3. Laceration left forearm dorsum 4x2x1/2cm
4. Laceration distal phalanx left ring finger 1x1/2x1/2cm
5. Laceration left Tpx. Middle injury 1x1/2x1/2cm.
6. Laceration right forearm 1/3 7x3x1/2cm.
7. Laceration occiput 10x2x1/2 cm.
8. Laceration right ankle dorsum 10x4x2cm.
9. Laceration left ankle dorsum 10x4x1cm.
10. Laceration left medial aspect 7x2x1cm."

P.W.11 is the another duty doctor in the Government Stanley Hospital. He examined Kandan already admitted as an inpatient in the hospital at 8.30 p.m. on 14.10.2001. Kandan was admitted in Ward No.9. Kandan told P.W.11 that he came to sustain injuries at the hands of six known persons by the use of sharp weapons. P.W.8 is the Assistant Professor of Forensic Medicine in the Government Royapettah Hospital. On receipt of the requisition and the dead body on 17.10.2001, he did post-mortem on the dead body of Kandan. He found various symptoms on the dead body, as noted by him, in Ex.P.5 the post-mortem report. Ex.P.6 is the viscera report, which shows that neither alcohol nor poison was detected in the viscera. Ex.P.7 is the Serologist's report, which shows that in the objects examined at the laboratory, human blood of 'O' group was found. P.W.8, the doctor opined that death is due to complications of injury to both lower limbs. The symptoms noted by him in Ex.P.5, the post-mortem certificate are as here under:

"Injuries:
1. Oblique sutured wound 10cm long seen over left side of head involving the left parietal region of scalp 4cm away from the midline. On removal of sutures: the margins are clean cut and bone deep. On further dissection: There is a bevelled cut over the left parietal bone to a length of 7cm communicating with the cranial cavity. No injury to the meninges and brain. Braincut section: Nil abnormal.
2. Oblique sutured wound 5cm long seen in the right side of head in the right parietal region of scalp 1cm outer to the midline. On removal of sutures the margins are clean cut and bone deep.
3. vertical sutured wound 4cm long over the right parietal eminence. On removal of sutures the margins are clean cut and bone deep.

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4. Oblique sutured wound 3cm long over mid occipital region of scalp. On removal of sutures the margins are clean cut and bone deep.
5. Vertical incised wound 6cm long over top of right shoulder with tailing downwards.
6. Oblique incised wound 4x0.5cm xskin deep on front of upper part of right chest.
7. Oblique incised wound 5x0.5cm xskin deep on back of right elbow.
8. Horizontal incised wound 6x0.5cmxbone deep on back of lower one third of right forearm. On dissection: The tendons and muscles are severed.
9. Oblique incised wound 4x2 cm xmuscle deep on back of middle one-third of right thigh.
10. Horizontal sutured wound 5cm long over the inner aspect of right knee. On removal of sutures the margins are clean cut and bone deep. The wound margins are covered with greenish yellow pus.
11. Oblique sutured wound 5cm long seen 2cm below Injury No.10. On removal of sutures, the margins are clean cut and bone deep, the wound margins, are covered with greenish yellow pus.
12. Oblique chop wound 7x3cmxbonedeep seen on back of lower one-third of right leg. The wound margins are covered with greenish (torn) pus.
13. Oblique incised wound 3x0.5cmxskin deep on back of lower one-third of left arm with tailing outwards.
14. Horizontal incised wound 7x0.5cmxskin deep on back of lower one-third of left arm with tailing downwards.
15. Incised wound 6x0,.5cmxskin deep on back of lower one-third of left fore arm with intervening normalskin.
16. Oblique chop wound 5x1cmxbone deep on back of left wrist.
17. Oblique chop wound 4x1cmxbone deep on back of upper part of left hand
18. Oblique chop wound 6x1cmxbone deep on back of left hand with severence of 3rd, 4th and 5th carpal bones, underlying muscles, tendons, vessels and nerves are completely severed.
19. Bevelled cut seen on back of left middle finger with partial amputation of distal phalanx.
20. Oblique sutured wound 6cm long seen on back of lower one-third of left thigh. On removal of sutures the margins are clean cut and muscle deep.
21. Oblique sutured sound 8cm long on back of outer aspect of left knee joint with tailing downwards. On removal of sutures the margins are clean cut and bone deep.

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22. Oblique incised wound 5x0.5cmxskin deep on back of middle one-third of left leg with tailing downwards.
23. Linear Superficial incised wound 5cm long seen on back of right chest.
24. Two linear superficial incised wounds each measuring 6 and 7 cm respectively seen on back of left chest.
25. Lower one-third of left leg with left foot is absent and the cut end exposes the muscles, tendon, vessels, nerves and the cut ends of lower one-third of tibia and fibula. The lower end of the bones are uneven and obliquely severed (traumatic severance). The skin margins are clean cut and covered with greenish yellow pus.
26. Lower one-third of right leg with right foot is absent and the cut end exposes the muscles, tendons, vessels, nerves and the cut ends of lower one-third of tibia and fibula. The lower end of the bones are uneven and obliquely severed (traumatic severance). The skin margins are clean cut and covered with greenish yellow pus.
27. Dark brown abrasions seen on: on front of right side abdomen 1.5x1cm; on left parietal region of scalp1x0.5cm; on right frontal region of scalp 2x0.5cm.
Heart: Chambers empty coronaries patent
Lungs: Pale.
Hyoid bone: Intact
Stomach: Empty Mucosa – nil abnormal.
Liver, Spleen & Kidneys: Pale.
Bladder: Empty."

7. P.W.12, examined to prove the actual occurrence, turned hostile. P.W.13 continued his investigation further by examining witnesses and recording their statements. He formed a separate police team to apprehend the accused. With the assistance of the team lead by Sub-Inspector of Police, Rajagopal, he arrested A1 to A7 at 5.30 p.m. on 17.10.2001 in the presence of witnesses and examined them. However, before they could be arrested, the persons, who were apprehended, indulged in violence by picking up soda bottles from a nearby shop and breaking them on the ground. On that basis, the complaint given by the Sub-Inspector of Police Rajagopal stands registered in his police station Crime No.1897 of 2001. When the arrested accused were examined in the presence of witnesses, each one of them gave a voluntary confession statement, the admissible portions of which are Exs. P.18 to P.24 respectively. M.Os. 4 to 10, knives came to be recovered under a mahazar Ex.P.25 from the house of A.6. On the same day, the accused were sent for judicial remand and the case properties were

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sent to the Court with a requisition to subject the same for chemical examination. At 10.00 a.m. on 24.10.2001 in Kannan Road at Renganathapuram Housing Colony, P.W.13 arrested A9 in the presence of witnesses and examined him. A9 also gave a voluntary confession statement, the admissible portion of which is Ex.P.26, pursuant to which, M.O.11 came to be recovered under Ex.P.27. On arrest, A.9 pointed out A.10 and A.11 near the railway station at Korukkupet at 11.30 a.m. They were also arrested. From them, M.Os. 12 and 13 came to be recovered under Ex.P.28. The arrested accused and the case properties were brought to the police station. The accused were sent for judicial remand and the case properties were sent to the Court with a requisition to subject the same for chemical examination. At 3.00 p.m. on 7.11.2001, P.W.13 arrested A8 in the presence of witnesses and examined him and A8 also gave a voluntary confession statement, the admissible portion of which is Ex.P.29. Pursuant to which, M.O.14 came to be recovered under Ex.P.30. The arrested accused and the case properties were brought to the police station, from where the accused were sent for judicial remand and the case properties were sent to the Court with a request to subject the same for chemical examination. Accordingly, M.Os. 1 to 10 were sent to the laboratory and Ex.P.31 is the report received from the laboratory. After completing the investigation and all the other legal formalities, P.W.13 filed the final report in Court against the accused for the offence referred to earlier.

8. When the accused were questioned under Section 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against them, they denied each and every circumstance put up against them as false and contrary to facts. As already noted, neither oral nor documentary evidence was brought before Court at their instance. Mr.K.Asokan, learned senior counsel appearing for A2 leading the arguments from the front would submit that all the eye witnesses examined in this case turned hostile. The Court is therefore left with Ex.P.4, the accident register; Ex.P.8, the complaint given by Kandan - which on his death had taken the character of dying declaration; Ex.P.10, the judicial dying declaration and Ex.P.15, the accident register alone to decide the fate of the prosecution case. By taking us through the evidence of P.W.s 7, 9 and 10, who recorded Exs. P.4, 8, and 10 and by taking us through the contents of Ex.P.15, the accident register and pointing out that the doctor who issued Ex.P.15 had not been examined at all, learned senior counsel would contend that all these documents contain materials, which are diametrically opposed to each other and in that event, there is no other go except to disbelieve all the documents and acquit the accused. As far as the judicial dying declaration is concerned, learned senior counsel by taking us through the evidence of P.W.10 would contend that there appears to be some suspicious circumstances in regard to the

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recording of Ex.P.10. For sustaining this point, learned counsel relied upon Ex.P.16, the altered express first information report sent by the investigating officer to the Court. According to the learned senior counsel, in Ex.P.4 – which is the earliest document, the injured, who was proved to be conscious, had said to P.W.7 that he came to receive injuries at the hands of 15 unknown persons. Ex.P.15 is the accident register issued by the General Hospital, Chennai, in which, it is shown that the injured had been assaulted by unknown persons. Therefore, he argued that while in Ex.P.4 the injured had said 15 unknown persons, in Ex.P.15, the injured was not clear as to how many assaulted him. Having the contents of Ex.P.4 and Ex.P.15 in mind, if the Court looks Ex.P.8 and Ex.P.10, it is seen that in those documents the injured had given the names of A1, A2, A8, A3, A4 and A9 in that order and it is also mentioned that P.W.12 was present by his side. It is further seen in Ex.P.8, according to the learned senior counsel, specific overt acts have been attributed to A1, A2 and all the named accused. But while in Ex.P.10 though the names of all the named accused found in Ex.P.8 are disclosed, yet the specific overt act is attributed to A1 alone. Therefore, the cumulative effect of all these additions, omissions or deletions, whatever it may be called, is that no document can be safely acted upon. Mr.Lenin Sekar, learned counsel appearing for A9 would contend that in all the records relied upon by the prosecution, the involvement of a person by name, Mani alone is given. His identity has not been fixed. There are enough material on record to show that the prosecution is not sure as to which place the said Mani belongs. According to the learned counsel, A9 put up for trial is not residing in any one of those places that have come out in evidence and he relied upon the confession statement of the accused recorded under Section 27 of the Evidence Act, namely, Ex.P.26, to show that A9 is residing only at 21, Ramanuja Iyer Street, Old Washermenpet, Chennai – 21. Therefore, the prosecution had definitely failed to establish the identity of A9 put up for trial as the person, who actually involved himself in the crime. Mr.V.Parthiban, and Mr.Swamidoss Manokaran, learned counsel appearing for the other convicted accused would more or less repeat the same arguments as advanced by Mr.K.Asokan, learned senior counsel. In meeting these points, learned Additional Public Prosecutor would contend that Exs. P.8 and P.10 are consistent as far as the naming of six persons are concerned and those six persons alone are convicted by the trial Court and the remaining have been acquitted. It may be true that in Ex.P.8 all the six named accused have been attributed a specific overt acts, but at the same time, it must be seen that in Ex.P.10, injured Kandan, apart from attributing specific overt act to A1, had also stated that the others also attacked him. Therefore, according to him, reading Exs. P.8 and P.10 together, this Court cannot find any deliberate omission affecting the prosecution case or an omission of the accused. Ex.P.15 entries are carried out from

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the entries found in Ex.P.4. According to him, nothing much can be made out on the contents of Exs. P.4 and P.15. Learned Additional Public Prosecutor would submit that though all the eye witnesses turned hostile, yet Exs. P.8 and P.10 clinchingly establish the involvement of the convicted accused in this case.

9. Having regard to the submissions made by the learned senior counsel appearing for some of the appellants and the other learned counsel on either side, we gave our anxious consideration to the various points projected before us. Even at the outset, we place on record that all the eye witnesses, who had been examined in this case, turned hostile. The witnesses turning hostile appears to be the order of the day and the Courts are helpless. But in this case, in addition to examining eye witnesses, the prosecution is heavily relying upon Exs. P.8 and P.10. It must be noticed that the occurrence was around 7.45 p.m. on 14.10.2001. P.W.7 is the duty doctor in the Stanley Hospital at Chennai and his evidence shows that within half an hour, namely, at 8.15 p.m. on the same day, injured Kandan was brought to him and was examined by him. On him, he had found almost 10 injuries. Of course, his evidence shows that Kandan was conscious and he told him that he received injuries at the hands of 15 unknown persons. So is the recording in Ex.P.4. The question is, shall we go by the evidence of P.W.7 and the contents of Ex.P.4 and on that basis can we doubt the entire prosecution case as projected by them now before the trial Court?. It is needless to state that on receiving injuries, in this case Kandan is shown to have received as many as 10 injuries as noted at the first examination and during post-mortem, it is found to be 27 in number, the injured would be definitely in a state of shock/trauma. As noted earlier, within half an hour, injured Kandan reached the hospital for examination. In such circumstances and in the face of the injuries, he is shown to have suffered, would it be possible for this Court to hold that he would be free from shock/trauma when he was examined by the doctor. The probability is in favour of the injured in a sense of shock and depression when he was in the hospital. Therefore, we are not inclined to attach any credibility more than what it deserves to the evidence of P.W.7 that injured Kandan told him that he received injuries at the hands of 15 unknown persons. In other words, even if Kandan is shown to have made such a statement to P.W.7, we are not impressed upon the argument advanced by the learned senior counsel for the defence that the prosecution case must be pinned down to the statement made by injured Kandan to P.W.7.

10. Why we are not inclined to accept the defence argument that only 15 unknown persons were involved in the crime and the prosecution does not know the identity of any of the assailants is because of the following facts:

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P.W.11 is the another duty doctor in the same Stanley Hospital. He examined Kandan at 8.30 p.m. on the same day in Ward No.9. P.W.11's evidence shows that Kandan told him that he received injuries at the hands of six known persons by the use of sharp weapons. We searched in vein to find out whether by the time P.W.7 came to examine injured Kandan or by the time, P.W.11 came to examine injured Kandan - the time gap being only 15 minutes - was there any other person by the side of Kandan, who could have tutored his mind to implicate people falsely in this case? As already stated, our thorough examination on record totally eliminates the presence of any other person having any special interest in the case to implicate the accused falsely. Therefore, when Kandan is shown to have disclosed to P.W.11 within 15 minutes after his examination by P.W.7, that six known persons had attacked him; we have no doubt at all that Kandan, by that time could have come out of his shock; regained his composure and would have been in a position to recollect what happened and that is the reason, he had disclosed to P.W.11 that six known persons using sharp weapons attacked him. This evidence of P.W.11, we state at the risk of repetition, eliminates any doubt on the involvement of the assailants put up before the Court in the crime and who are before us. In this context, we also refer to Ex.P.15. It is on record that Kandan was transferred from Stanley Hospital to Government General Hospital, Chennai. Ex.P.15 shows that immediately after midnight, namely, within 25 minutes after the midnight on 14.10.2001, Kandan was admitted in the General Hospital. Ex.P.15 records that Kandan has been referred from Stanley Hospital vide A.R. No.1244325. Ex.P.4 is the accident register issued by the Stanley Hospital. In fact, the noting in Ex.P.15 is as here under:

" Injuries as per AR entry from Stanley."

Of course another argument is made by the learned counsel appearing for the defence that the doctor, who issued Ex.P.15 had not been examined at all. The submission might have deserved acceptance at our hands, had Kandan was first taken to the General Hospital for treatment and he was examined by the doctor there. As already noted, Kandan was already seen by P.W.7 and P.W.11 in the Stanley Hospital from where alone, he was transferred for better treatment to the Government General Hospital, Chennai. Therefore, the doctor, who received him at the Government General Hospital had no other duty except to receive him and admit him in the hospital, since the injured patient was accompanied by the accident register, namely, Ex.P.4, issued in the Stanley Hospital. Therefore, what ever entries that are found in Ex.P.15 must be solely on the basis of the entries in Ex.P.4 and not from any other source. Of course, P.W.3, the mother of the victim had been asked in cross examination

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whether in the Government General Hospital any question was put to the victim as well as to her and though immediately she answered 'yes' and within a fraction of a second, namely, by the next answer itself, she went back from her earlier statement. Therefore going by the materials noted above by us, we are not inclined to give any weight to the evidence of P.W.3 that came out in her cross examination that in the Government General Hospital, she was examined regarding the injuries.

11. What injured Kandan told P.W.11 at 8.30 p.m. is fully reflected in Ex.P.8 recorded by P.W.9, the Sub-Inspector of Police. His evidence shows that around 8.20 p.m., he received information over telephone from the Stanley Hospital and he immediately rushed to the hospital and by examining Kandan in the presence of duty doctor, he recorded Ex.P.8. Ex.P.8 shows that it was recorded at 9.00 p.m. on that night in the hospital. Ex.P.8 gives a clear picture about the involvement of A1, A2, A8, A3, A4 and A9 in the crime. Of course, in Ex.P.10, except mentioning the names of the six persons found disclosed in Ex.P.8, Kandan had disclosed a specific overt act only against A1 and said that others also cut him. Would this omission of not distributing specific overt acts to others except A1 as he had disclosed in Ex.P.8 militates against the prosecution case and our answer is an emphatic 'no'. Reading Exs.P.8 and P.10 together, there cannot be any doubt at all that Kandan was consistent in one aspect, namely, mentioning the names of six accused as the persons, who perpetrated the crime on him.

12. Now let us apply our mind to the attack made on the recording of Ex.P.10. For this purpose, learned senior counsel relies upon Ex.P.16 the express altered first information report sent to the Court. We find a statement in Ex.P.16 that Kandan was transferred from Stanley Hospital to the Government General Hospital, Chennai at 12.40 p.m. on 15.10.2001. This statement in Ex.P.16 on the face of it should be incorrect. Ex.P.15, the accident register issued at the General Hospital shows that 25 minutes after the midnight of 14.10.2001, Kandan was admitted in the General Hospital at Chennai. Therefore, the statement made in Ex.P.16, in our considered opinion, should be only an inadvertent error committed by the Inspector of Police in sending the altered express first information report to the Court. Even otherwise, we find that this is an infirmity committed by the police officer, which by itself cannot damage the credibility of Exs. P.8 and P.10, which speak volumes about the involvement of the accused in the crime. Based on the contents of Ex.P.16, an argument is advanced that P.W.10, the 15th Metropolitan Magistrate, could not have recorded Ex.P.10 at 2.00 a.m. on 15.10.2001 in the General

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Hospital. Since we rejected Ex.P.16 and we accepted Ex.P.15 showing at what time Kandan was admitted in the General Hospital, Chennai on being transferred from Stanley Hospital, we are not in a position to doubt the evidence of P.W.10, the 15th Metropolitan Magistrate that he reached the hospital and recorded the dying declaration at 1.00 a.m. on 15.10.2001, namely on the intervening night of 14.10.2001 and 15.10.2001. On going through the evidence of P.W.10, we find that he questioned the injured personally and going by his answers, he was fully satisfied about the fit state of mind of Kandan to give a statement. On going through his evidence, we find there cannot be any doubt at all regarding the manner in which P.W.10 examined injured Kandan and then recorded the judicial dying declaration, namely, Ex.P.10. As already noted, Exs. P.8 and P.10 undoubtedly establish the involvement of the persons, who are convicted by the trial Court and who are the appellants before us.

13. Learned counsel appearing for A9 vehemently contended that the prosecution had failed to establish that A9 is the person whose name is disclosed in Ex.P.8 and P.10. Police have arrested A9 and according to them, it is he who is involved in the crime. If the accused, namely, A9 wants to dispute his involvement in the crime or he is put up for trial on a mistaken identity, then the burden is on him to show that he is not the person involved, but some other person, having his name alone was involved and it is only that person, who had been implicated by injured Kandan in Exs. P.8 and P.10. To substantiate this point, he ought to have cross examined the investigating officer regarding his identity. But no such cross examination was done when P.W.13, the investigating officer was in the box. Under these circumstances, we are not in a position to sustain the arguments advanced by the learned counsel appearing for A9 that only on mistaken identity, he had been roped into the case and therefore he must be acquitted, especially when there is clinching evidence in Exs. P.8 and P.10 that it is he, who is involved in the crime along with the other accused. Consequently, finding no merits in all these appeals, the same are dismissed.

sl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The III Additional Sessions Judge in charge II,
   Additional Sessions Judge,Chennai.
2. The III Additional Sessions Judge in charge II,
   Additional Sessions Judge,Chennai through the Principal Sessions
   Judge, Chennai.
3. The District Collector, Chennai.
4. The Director General of Police, Chennai.
5. The Public Prosecutor, High Court, Madras.
6. The Superintendent, Central Prison, Vellore.
7. The Superintendent, Central Prison, Chennai.
8. The Inspector of Police, H.1, Washermenpet Police Station,
   Chennai.

+ 2 ccs to Mr. V. Parthiban, Advocate SR No. 43396

+ 1 cc to Mrs. Gita Asokan, Advocate SR no. 43383

+ 1 cc to Mr. S. Swamidoss Manokaran, Advocate SR No. 43706

PV(CO)
SR/9.10.2006

Crl.A.Nos.1369,1409,1425/04 & 544/05

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